

RBS and RUS, USDA

§ 4290.1230

CONDITIONAL COMMITMENTS TO RESERVE LEVERAGE FOR A RBIC

§ 4290.1200 Leverage commitment to a RBIC—application procedure, amount, and term.

(a) *General.* Under the provisions in §§ 4290.1200 through 4290.1240, you may apply for the Secretary's conditional commitment to reserve a specific amount of Leverage and type of Debenture (standard or discounted) for your future use. You may then apply to draw down Leverage against the commitment.

(b) *Applying for a Leverage commitment.* The Secretary will notify you when requests for Leverage commitments are being accepted, and upon receipt of your request, will send you a complete application package.

(c) *Limitations on the amount of a Leverage commitment.* The amount of a Leverage commitment must be a multiple of \$5,000. The Secretary in his or her discretion may determine a minimum dollar amount for Leverage commitments. Any such minimum amounts will be published in Notices in the FEDERAL REGISTER from time to time.

(d) *Term of Leverage commitment.* Your Leverage commitment will automatically lapse on the expiration date stated in the commitment letter issued to you by the Secretary. The Secretary's Leverage commitment will be included in the Participation Agreement at the time of your licensing as a RBIC, under § 4290.390.

§ 4290.1220 Requirement for RBIC to file financial statements at the time of request for a draw.

(a) If you submit a request for a draw against your Leverage commitment more than 90 days following your submission of an annual SBA Form 468 or a SBA Form 468 (Short Form), you must:

(1) Give the Secretary a financial statement on Form 468 (Short Form), and

(2) File a statement of no material adverse change in your financial condition since your last filing of SBA Form 468.

(b) You will not be eligible for a draw if you are not in compliance with this § 4290.1220.

§ 4290.1230 Draw-downs by RBIC under Leverage commitment.

(a) *RBIC's authorization of the Secretary to guarantee securities.* By submitting a request for a draw against the Leverage commitment, you authorize the Secretary, or the Secretary's designated agent or trustee, to guarantee your Debenture and to sell it with the Secretary's guarantee.

(b) *Limitations on amount of draw.* The amount of a draw must be a multiple of \$5,000. The Secretary, in his or her discretion, may determine a minimum dollar amount for draws against Leverage commitments. Any such minimum amounts will be published in Notices in the FEDERAL REGISTER from time to time.

(c) *Effect of regulatory violations on RBIC's eligibility for draws—(1) General rule.* You are eligible to make a draw against your Leverage commitment only if you are in compliance with all applicable provisions of the Act and this part (*i.e.*, no unresolved statutory or regulatory violations) and your Participation Agreement.

(2) *Exception to general rule.* If you are not in compliance, you may still be eligible for draws if:

(i) The Secretary determines that your outstanding violations are of non-substantive provisions of the Act or this part or your Participation Agreement and that you have not repeatedly violated any non-substantive provisions; or

(ii) You have agreed with the Secretary in writing on a course of action to resolve your violations and such agreement does not prevent you from issuing Leverage.

(d) *Procedures for funding draws.* You may request a draw at any time during the term of the commitment. With each request, submit the following documentation:

(1) A statement certifying that there has been no material adverse change in your financial condition since your last filing of SBA Form 468 (*see also* § 4290.1220 for SBA Form 468 filing requirements).

(2) If your request is submitted more than 30 days following the end of your fiscal year, but before you have submitted your annual filing of SBA Form 468 in accordance with § 4290.630(a), a